



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 11, 2019

Ms. Alicia K. Kreh  
Counsel for the Town of Flower Mound  
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OR2019-34857

Dear Ms. Kreh:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 801141.

The Town of Flower Mound (the "town"), which you represent, received a request for police records relating to a named individual, including a specified arrest. You inform us the town will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code and Open Records Decision 684 (2009).<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection,

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general opinion.

investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending investigation and prosecution. Based on your representation and our review, we find release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identity of the complaining party. Accordingly, with the exception of basic information, the town may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

In this instance, however, the requestor is an investigator for the Texas Department of Insurance (“TDI”). We believe the requestor may have a statutory right of access to some of the information at issue. Section 411.106(a)(1) of the Government Code provides that TDI is entitled to obtain from the Department of Public Safety (the “DPS”) criminal history record information maintained by the DPS that relates to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the State Board of Insurance to engage in an activity regulated under the Insurance Code. Gov’t Code § 411.106(a)(1). Thus, to the extent the requestor is seeking criminal history record information regarding a license applicant, TDI is authorized to receive criminal history record information from the DPS. Pursuant to section 411.087 of the Government Code, an agency that is entitled to obtain criminal history record information from the DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency].” Gov’t Code § 411.087(a)(2). Accordingly, TDI is also authorized to receive criminal history record information from a local criminal justice agency, such as the town. *See* Open Records Decision No. 655 (1997); *see also* Gov’t Code §§ 411.083(b)(2), 411.087(a). Criminal history record information consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). If the suspect in the submitted report is an applicant for a license from TDI, the town must make available to the requestor the criminal history record information

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<sup>2</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

from the documents otherwise subject to section 552.108 pursuant to section 411.106(a)(1) of the Government Code. We note a statutory right of access prevails over the Act's general exceptions to public disclosure, including section 552.108 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). With the exception of basic information, the town may withhold the remaining information under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state the information you marked reveals the identity of an individual who reported possible violations of section 31.03 of the Texas Penal Code. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the reporting party. Therefore, based on your representations and our review, we conclude the town may withhold the reporting party's identifying information, which you marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law).

In summary, if the suspect in the submitted report is an applicant for a license from TDI, the town must make available to the requestor the criminal history record information from the documents otherwise subject to section 552.108 pursuant to section 411.106(a)(1) of the Government Code. With the exception of basic information, the town may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing basic information, the town may withhold the information you marked, under

section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KM/be

Ref: ID# 801141

Enc. Submitted documents

c: Requestor  
(w/o enclosures)